

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
ROBERT POINDEXTER,

Plaintiff,

-against-

EMI RECORD GROUP INC.,

Defendant.  
-----X

**JAMES L. COTT, United States Magistrate Judge.**

USDC SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
DOC #:  
DATE FILED: 9/2/11

**ORDER**

11 Civ. 0559 (LTS) (JLC)

On January 20, 2011, Plaintiff Robert Poindexter ("Poindexter"), proceeding pro se, filed the complaint in this copyright infringement action (Dkt. No. 2) alleging that Defendant Capitol Records, LLC ("Capitol"), incorrectly named as EMI Record Group Inc., infringed his 1971 sound recording "Thin Line Between Love and Hate."

On June 3, 2011, Capitol moved to dismiss the complaint pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure for lack of subject-matter jurisdiction and for failure to state a claim upon which can be granted. (Dkt. Nos. 16-17). 18 days after service of the motion to dismiss, on June 22, 2011, Poindexter filed an amended complaint with the Court's Pro Se Office as was his right under Fed. R. Civ. P. 15(a)(1)(B) ("A party may amend its pleading once as a matter of course within . . . 21 days after service of a motion under Rule 12(b), (e), or (f) . . .").<sup>1</sup>

Since Poindexter's Amended Complaint supersedes the original complaint, see, e.g., In re Crysen/Montenay Energy Co., 226 F.3d 160, 162 (2d Cir. 2000), and since Capitol's motion to

<sup>1</sup> The Clerk of the Court is directed to docket the amended complaint and issue an amended summons. The Pro Se Office is directed to send Poindexter a new service package as well.

USDC SDNY  
DATE SCANNED 9/2/11

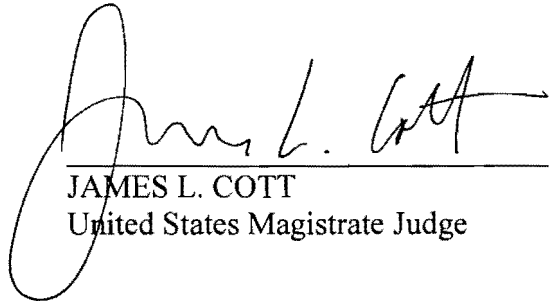
dismiss was directed at that complaint, that motion is now moot. The Clerk of the Court is directed to mark Capitol's motion to dismiss (Dkt. No. 9) withdrawn as moot.

Since it appears Poindexter has failed to effectuate service of the amended complaint on Capitol (as there is no affirmation or proof of service), he shall do so no later than September 20, 2011. Consistent with Fed. R. Civ. P. 15(a)(3), Capitol shall have 14 days after service of the amended complaint to respond to it, either by renewing its motion to dismiss or otherwise.

The Clerk of the Court is directed to accept the amended complaint for filing.

**SO ORDERED.**

Dated: New York, New York  
September 2, 2011



JAMES L. COTT  
United States Magistrate Judge

**Copies of this Order have been sent by ECF to counsel and by mail to the following:**

Robert Poindexter  
153-27 120th Avenue  
Jamaica, New York 11434